

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Marie A. Baker

Debtor.

Case No. 03-64179

Chapter 13

Hon. Marci B. McIvor

**OPINION DENYING FORD MOTOR CREDIT'S MOTION FOR ALLOWANCE OF
ADMINISTRATIVE CLAIM**

This matter is before the Court on Ford Motor Credit Company's Motion for Allowance of Administrative Claim. Ford seeks to recover expenses totaling \$12,681.62 for excess mileage, "wear and tear", and damage on Debtor's leased vehicle. For the reasons set forth in this Opinion, the Motion is denied.

Background

Debtor Marie Baker filed a voluntary Chapter 13 bankruptcy petition on September 2, 2003. At that time, she leased a 2002 Ford Explorer through Ford Motor Credit Company. Debtor's Chapter 13 Plan assumed the lease and provided for lease payments to be made directly to Ford Motor Credit. Ford did not object to this treatment and Debtor's Plan was confirmed on December 11, 2003. Debtor kept the vehicle for the duration of the lease (through April 27, 2005) and made all monthly payments as required. At the end of the lease, she surrendered the vehicle to a Ford dealership. A vehicle inspection performed by the dealership indicated that Debtor had driven the vehicle 50,151 miles over the limit provided for in her lease and that the vehicle was damaged. The excess mileage and "wear and tear" charges totaled \$12,681.62.

On June 7, 2005, Ford Motor Credit filed the present Motion for Allowance of Administrative Expense. Ford seeks to have the excess mileage and "wear and tear"

charges held payable as administrative expenses under 11 U.S.C. § 503(a). Both the Trustee and the Debtor object, arguing that those charges should be treated as a general unsecured post-petition claim.

Analysis

“The Bankruptcy Code grants priority to certain administrative expenses, such as ‘the actual necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case.’ *Pension Benefit Guaranty Corp. v. Sunarhauserman, Inc. (In re Sunarhauserman, Inc.)*, 126 F.3d 811, 816 (6th Cir. 1997), *quoting* 11 U.S.C. § 503(b)(1)(A). In the Sixth Circuit, a debt qualifies as an “actual, necessary” administrative expense under the Code where: (1) it arose from a transaction with the bankruptcy estate and (2) it directly and substantially benefitted the estate. *Pension Benefit Guaranty*, 126 F.2d at 816. The Bankruptcy Court has broad discretion to determine whether a claim for an administrative expense is actually an administrative expense. *In re Butcher*, 108 B.R. 634, 636 (Bankr. E.D. Tenn. 1989). Since administrative expense claims have a higher priority than most other claims (11 U.S.C. § 507(a)(1)), the payment of an administrative expense reduces the estate assets available for the repayment of lower priority claims.¹ For this reason, “Bankruptcy Courts should strictly scrutinize claims and narrowly construe the terms ‘actual’ and necessary.” *Id.* at 636-37 (additional citations omitted).

¹ 11 U.S.C. § 507(a)(1) states:

- (a) The following expenses and claims have priority in the following order:
 - (1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

Applying the Sixth Circuit's two pronged test to the present facts, the lease at issue clearly arose from a transaction with the bankruptcy estate thus satisfying the first prong. However, the expenses Ford seeks to have paid ahead of all other creditors, excess miles and "wear and tear" cannot be reasonably construed as directly and substantially benefitting the estate.

As a general rule, a debtor's assumption of a vehicle lease is critical to the success of a chapter 13 plan. In order to fund a plan, a debtor needs to be employed. In order to stay employed, a debtor needs transportation to work. In that way, the lease payments which a debtor assumes in a chapter 13 case directly benefit the estate and at least one court has treated the post-petition breach of an assumed lease as an administrative expense. See *In re Masek*, 301 B.R. 336 (Bankr. D. Neb. 2003).

In the *Masek* case, the chapter 13 debtors entered into a stipulated order with Ford in which they agreed to assume a vehicle lease and make regular monthly payments to Ford. The stipulation entitled Ford to relief from the stay upon the filing of an affidavit setting forth any event of default in the terms of the order. In August, 2003, Ford filed an affidavit of default for debtors' failure to make three monthly payments and Ford was permitted to repossess and sell the vehicle. The Trustee then sought to discontinue payments to Ford. Ford argued that because the vehicle was leased and debtors assumed the lease, Ford was "entitled to the full value of payments due [under the lease] as an administrative expense under 11 U.S.C. § 503(b)(1)(A)". *Id.* at 336. The Court agreed, explaining that,

[t]he negotiation between the parties that resulted in the stipulated assumption of the lease created, in essence, a new agreement, as both parties made concessions in agreeing to continue with the lease. The debtors were allowed to

keep the vehicle with the understanding they would remain current on payments and make appropriate provisions in their plan for the pre-petition deficiency and the return of the vehicle, while the creditor gave up its right to immediate possession of the vehicle upon the initial default. If Ford Motor Credit were not permitted to recover the payments it is otherwise entitled to, then the lease assumption caused only a detriment with no concomitant benefit, leaving the question of why a creditor would ever agree to a lease assumption under such circumstances.

Id. at 341-42.

In the present case, the issue is not whether the fixed monthly lease payments should be treated (upon post-petition breach of the lease) as an administrative expense, but how charges for excess miles and vehicle damage incurred *over and above* the monthly lease payments should be treated at the end of the lease. Unlike the debtor in *Masek*, Debtor in this case made all fixed monthly lease payments as agreed. While Ford asserts that the “wear and tear” charges should be treated like the monthly lease payments, the Court disagrees. Neither the extra 50,000 miles placed on the vehicle nor the damage to the vehicle provided a direct and substantial benefit to the estate. If a post confirmation expense provides no benefit to the estate, the creditor has no right to claim that payment of that expense suddenly has priority over other claims.

Under the facts of this case, treating “wear and tear” damages as an administrative expense is particularly unfair to other creditors. At the time the plan was confirmed, Ford agreed to treatment outside of the Plan. In other words, Ford agreed to rely exclusively on the Debtor to comply with the lease. The advantage to a creditor in accepting direct payment from a debtor is that if the debtor misses a single payment, the creditor is likely to obtain immediate relief from the stay. The disadvantage to a creditor is that the creditor cannot look to the trustee for payment of its claim. The terms of a confirmed plan are

binding on both the creditors and the debtor. See 11 U.S.C. § 1327.² Ford cannot now seek payment of post-petition damages from the bankruptcy estate.

To allow Ford to receive payments of its post-petition damages claim as an administrative claim would have the effect of destroying Debtor's Plan. The Debtor proposed total plan payments of \$83,423.15 with \$ 5,711.46 allocated to administrative expenses (Trustee fees and attorney fees), \$70,839.36 to mortgage payments, \$2,323.08 to other secured claims and \$4,549.26 to unsecured claims. Pursuant to 11 U.S.C. § 1326 (b)(1), if Ford Motor Credit's post confirmation claim was entitled to administrative expense status, the claim must be paid prior to unsecured claims.³ Furthermore, § 1322(b)(2) provides that a debtor cannot modify the debt owed on the debtor's primary residence.⁴ Payment of Ford's claim in the amount of \$12,682 would eliminate the funds available for unsecured creditors. The Plan would then violate the Code with regard to Debtor's mortgage payments. Debtor's creditors are entitled to rely on the terms of the confirmed Plan. Their treatment cannot be unilaterally altered 1 ½ years after confirmation

²Section 1327 (a) states:

The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

³11 U.S.C. § 1326(b)(1) provides:

(b) Before or at the time of each payment to creditors under the plan, there shall be paid-

(1) any unpaid claim of the kind specified in section 507(a)(1).

⁴11 U.S.C. § 1322(b)(2) provides:

(b) Subject to subsections (a) and (c) of this section, the plan may -

(2) modify the rights of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.

of the Plan.

While Ford may interpret the denial of the present Motion as discouraging vehicle lessors from agreeing to allow the assumption of vehicle leases in bankruptcy, it should be noted that Ford is not without a remedy for “wear and tear” damages. Because Ford agreed to repayment of its lease outside of the plan, the post- petition “wear and tear” damages are not dischargeable. A Chapter 13 discharge only discharges “debts provided for by the plan.” 11 U.S.C. § 1328(a).⁵ As with any leased vehicle that is returned in worse condition than expected, Ford can (at the conclusion of Debtor’s bankruptcy) pursue legal remedies against Debtor. Recovery of damages for high mileage and “wear and tear” are risks Ford routinely assumes by leasing vehicles to consumers, in or out of bankruptcy. Ford cannot eliminate this risk by demanding payment of those damages through the bankruptcy estate.

Conclusion

For the foregoing reasons, Ford Motor Credit’s Motion for Allowance of Administrative Claim is DENIED.

/s/

Marci B. McIvor
United States Bankruptcy Judge

Dated: August 16, 2005
Detroit, Michigan

cc: Richardo Kilpatrick

⁵11 U.S.C. § 1328(a) provides:

As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title. . .

Leon Gant
David Ruskin